

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON THE REVERSE OF THE FORM.)

**I. (a) PLAINTIFFS**

DANIEL KEATING-TRAYNOR

**DEFENDANTS**

AC SQUARE, INC., et al.

(b) County of Residence of First Listed Plaintiff San Francisco  
(EXCEPT IN U.S. PLAINTIFF CASES)(c) Attorney's (Firm Name, Address, and Telephone Number)  
(d) Daniel Berko, Esq.  
(e) 819 Eddy Street  
San Francisco, CA 94109  
T: 415.771.6174County of Residence of First Listed Defendant San Mateo

(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE LAND INVOLVED.

## Attorneys (If Known)

Ronald A. Peters, Esq.  
Littler Mendelson50 West San Fernando Street, 15<sup>th</sup> Fl.  
San Jose, CA 95113  
T: 408.998.4150**II. BASIS OF JURISDICTION** (Place an "X" in One Box Only)

- |  |  |
|--|--|
| <input type="checkbox"/> 1 U.S. Government Plaintiff | <input checked="" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party) |
| <input type="checkbox"/> 2 U.S. Government Defendant | <input type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)   |

**III. CITIZENSHIP OF PRINCIPAL PARTIES** (Place an "X" in One Box for Plaintiff and One Box for Defendant)

	PTF	DEF	PTF	DEF
Citizen of This State	<input type="checkbox"/> 1	<input type="checkbox"/> 1 Incorporated or Principal Place of Business In This State	<input type="checkbox"/> 4	<input type="checkbox"/> 4
Citizen of Another State	<input type="checkbox"/> 2	<input type="checkbox"/> 2 Incorporated and Principal Place of Business In Another State	<input type="checkbox"/> 5	<input type="checkbox"/> 5
Citizen or Subject of a Foreign Country	<input type="checkbox"/> 3	<input type="checkbox"/> 3 Foreign Nation	<input type="checkbox"/> 6	<input type="checkbox"/> 6

**IV. NATURE OF SUIT** (Place an "X" in One Box Only)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> PERSONAL INJURY	<input type="checkbox"/> 422 Appeal 28 USC 158	<input type="checkbox"/> 400 State Reapportionment
<input type="checkbox"/> 120 Marine	<input type="checkbox"/> 310 Airplane	<input type="checkbox"/> 362 Personal Injury—Med. Malpractice	<input type="checkbox"/> 423 Withdrawal 28 USC 157	<input type="checkbox"/> 410 Antitrust
<input type="checkbox"/> 130 Miller Act	<input type="checkbox"/> 315 Airplane Product Liability	<input type="checkbox"/> 365 Personal Injury—Product Liability	<input type="checkbox"/> 430 Banks and Banking	<input type="checkbox"/> 430 Commerce
<input type="checkbox"/> 140 Negotiable Instrument	<input type="checkbox"/> 320 Assault, Libel & Slander	<input type="checkbox"/> 368 Asbestos Personal Injury Product Liability	<input type="checkbox"/> 450 Deportation	<input type="checkbox"/> 460 Racketeer Influenced and Corrupt Organizations
<input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment	<input type="checkbox"/> 330 Federal Employers' Liability	<input type="checkbox"/> 370 Other Fraud	<input type="checkbox"/> 820 Copyrights	<input type="checkbox"/> 480 Consumer Credit
<input type="checkbox"/> 151 Medicare Act	<input type="checkbox"/> 340 Marine	<input type="checkbox"/> 371 Truth in Lending	<input type="checkbox"/> 830 Patent	<input type="checkbox"/> 490 Cable/Sat TV
<input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excl. Veterans)	<input type="checkbox"/> 345 Marine Product Liability	<input type="checkbox"/> 380 Other Personal Property Damage	<input type="checkbox"/> 840 Trademark	<input type="checkbox"/> 810 Selective Service
<input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits	<input type="checkbox"/> 350 Motor Vehicle	<input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 850 Securities/Commodities/ Exchange	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 160 Stockholders' Suits	<input type="checkbox"/> 355 Motor Vehicle Product Liability	<input type="checkbox"/> 390 Other	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 875 Customer Challenge 12 USC 3410
<input type="checkbox"/> 190 Other Contract	<input type="checkbox"/> 360 Other Personal Injury	<input type="checkbox"/> 710 Fair Labor Standards Act	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 863 DIWC/DIWW (405(g))
<input type="checkbox"/> 195 Contract Product Liability		<input type="checkbox"/> 720 Labor/Mgmt. Relations	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 890 Other Statutory Actions
<input type="checkbox"/> 196 Franchise		<input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 891 Agricultural Acts
REAL PROPERTY	CIVIL RIGHTS	PRISONER PETITIONS	SOCIAL SECURITY	<input type="checkbox"/> 861 HIA (1395ff)
<input type="checkbox"/> 210 Land Condemnation	<input type="checkbox"/> 441 Voting	<input type="checkbox"/> 510 Motions to Vacate Sentence	<input type="checkbox"/> 862 Black Lung (923)	<input type="checkbox"/> 892 Economic Stabilization Act
<input type="checkbox"/> 220 Foreclosure	<input type="checkbox"/> 442 Employment	<input type="checkbox"/> Habeas Corpus:	<input type="checkbox"/> 863 DIWC/DIWW (405(g))	<input type="checkbox"/> 893 Environmental Matters
<input type="checkbox"/> 230 Rent Lease & Ejectment	<input type="checkbox"/> 443 Housing/ Accommodations	<input type="checkbox"/> 530 General	<input type="checkbox"/> 864 SSID Title XVI	<input type="checkbox"/> 894 Energy Allocation Act
<input type="checkbox"/> 240 Torts to Land	<input type="checkbox"/> 444 Welfare	<input type="checkbox"/> 535 Death Penalty	<input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 895 Freedom of Information Act
<input type="checkbox"/> 245 Tort Product Liability	<input type="checkbox"/> 445 Amer. w/Disabilities - Employment	<input type="checkbox"/> 540 Mandamus & Other	<input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant)	<input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice
<input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 446 Amer. w/Disabilities - Other	<input type="checkbox"/> 550 Civil Rights	<input type="checkbox"/> 871 IRS—Third Party 26 USC-7609	<input type="checkbox"/> 950 Constitutionality of State Statutes
	<input type="checkbox"/> 440 Other Civil Rights	<input type="checkbox"/> 555 Prison Condition	<input type="checkbox"/> 462 Naturalization Application	
			<input type="checkbox"/> 463 Habeas Corpus – Alien Detainee	
			<input type="checkbox"/> 465 Other Immigration Actions	
IMMIGRATION				

**V. ORIGIN**

(Place an "X" in One Box Only)

 1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court

Transferred from

 4 Reinstated or Reopened  5 another district (specify) 6 Multidistrict Litigation

Appeal to District

 7 Judge from Magistrate Judgment**VI. CAUSE OF ACTION**Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):  
**28 U.S.C. Sections 1441 and 1446**

Brief description of cause:

Wages and hour causes of action.

**VII. REQUESTED IN COMPLAINT:** CHECK IF THIS IS A CLASS ACTION  
UNDER F.R.C.P. 23**DEMAND \$**CHECK YES only if demanded in complaint:  
**JURY DEMAND:**  Yes  No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE Hon. Marilyn Hall Patel

DOCKET NUMBER C 08-02907 MHP

DATE

June 19, 2008

FOR OFFICE USE ONLY

AMOUNT

APPLYING IFFP

JUDGE

MAG. JUDGE

SIGNATURE OF ATTORNEY OF RECORD



1 RONALD A. PETERS, Bar No. 169895  
 2 BENJAMIN EMMERT, Bar No. 212157  
 3 LILANTHI RAVISHANKAR, Bar No. 243487  
 4 LITTLER MENDELSON  
 5 A Professional Corporation  
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 8 San Jose, CA 95113-2303  
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 Facsimile: 408.288.5686  
 E-Mail: rpeters@littler.com  
 bemmert@littler.com  
 lravishankar@littler.com

10 Attorneys for Defendants  
 11 AC SQUARE, INC. AFSHIN GHANEH,  
 12 ANDREW BAHMANYAR

FILED  
 IN 2008  
 RICHARD W. WIEKING  
 CLERK, U.S. DISTRICT COURT  
 NORTHERN DISTRICT OF CALIFORNIA  
 M  
 PM

EDL

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA

12 SAN FRANCISCO DIVISION CIV 08 3035

13 DANIEL KEATING-TRAYNOR on  
 14 behalf of himself and all others similarly  
 situated;

15 Case No. CIV 464144 (CONSOLIDATED BY  
ORDER OF COURT WITH CIV 473571)

16 Plaintiffs,  
 17 v.  
 18 AC SQUARE INC.; COMCAST INC.;  
 19 AFSHIN GHANEH; ANDREW  
 BAHMANYAR; AND DOES 1-60  
 INCLUSIVE;

NOTICE OF FILING REMOVAL

Defendants.

TO PLAINTIFF, AND HIS ATTORNEY OF RECORD, ROBERT DAVID BAKER, ESQ.

NOTICE IS HEREBY GIVEN that AC SQUARE, INC. AFSHIN GHANEH AND ANDREW BAHMANYAR Defendants in Action No., CIV 473571 consolidated into CIV 464144, Superior Court of the State of California, County of San Mateo, have filed in the United States District Court, Northern District of California, San Francisco Division, a Notice of Removal of Civil Action pursuant to 28 U.S.C. sections 1441 and 1444.

1 attached as Exhibit A.

2 PLEASE TAKE FURTHER NOTICE that pursuant to 28 U.S.C. section 1446, the  
3 filing of said Notice of Removal of action in federal court, together with the filing of a copy of said  
4 Notice to State Court and Adverse Party of Removal of Civil Action to Federal Court with the Clerk  
5 of this state court, effects the removal of this action, and the state court may therefore proceed no  
6 further unless and until the case is remanded.

7 Dated: June 19, 2008

8  
9  
10 RONALD A. PETERS  
11 BENJAMIN EMMERT  
12 LILANTHI RAVISHANKAR  
13 LITTLER MENDELSON  
A Professional Corporation  
Attorneys for Defendants  
AC SQUARE INC., AFSHIN GHANEH,  
AND ANDREW BAHMANYAR

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17 Firmwide:85614507.1 047098.1008  
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2.

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NOTICE TO STATE COURT AND ADVERSE PARTY OF REMOVAL OF CIVIL ACTION  
TO FEDERAL COURT



1 RONALD A. PETERS, Bar No. 169895  
 2 BENJAMIN EMMERT, Bar No. 212157  
 3 LILANTHI RAVISHANKAR, Bar No. 243487  
 4 LITTLER MENDELSON  
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 lravishankar@littler.com

8 Attorneys for Defendants  
 AC SQUARE, INC. AFSHIN GHANEH,  
 9 ANDREW BAHMANYAR

10 UNITED STATES DISTRICT COURT  
 11 NORTHERN DISTRICT OF CALIFORNIA  
 12 SAN FRANCISCO DIVISION

13 DANIEL KEATING-TRAYNOR on  
 14 behalf of himself and all others similarly  
 situated;

15 Plaintiffs,

16 v.  
 17 AC SQUARE INC.; COMCAST INC.;  
 AFSHIN GHANEH; ANDREW  
 BAHMANYAR; AND DOES 1-60  
 INCLUSIVE;

18 Defendants.

19 Case No. CIV 464144 (**CONSOLIDATED BY  
 ORDER OF COURT WITH CIV 473571**)

20 **NOTICE OF REMOVAL OF  
 CONSOLIDATED ACTION PURSUANT  
 TO 28 U.S.C. §1441(B) FEDERAL  
 QUESTION**

21  
 22 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

23 PLEASE TAKE NOTICE that Defendants AC SQUARE INC., AFSHIN GHANEH  
 24 AND ANDREW BAHMANYAR ("Defendants"), hereby jointly remove to this Court the state court  
 25 actions described below:

26 1. On or about June 29, 2007, a civil action was commenced in the Superior  
 27 Court of the State of California in and for the County of San Mateo, entitled *Daniel Keating-Traynor*  
 28 *on behalf of himself and others similarly situated v. AC Square, Inc. and Does 1-600 inclusive*,

1 designated as case number CIV 464144, a copy of which is attached hereto as **Exhibit 1**.

2       2. On or about June 10, 2008, a separate civil action was commenced in the  
 3 Superior Court of the State of California in and for the County of San Mateo entitled *Daniel*  
 4 *Keating-Traynor on behalf of himself and all others similarly situated v. AC Square Inc., Comcast*  
 5 *Inc., Afshin Ghaneh and Andrew Bahmanyar as individuals and Does 1-60 inclusive "Class Action"*  
 6 and designated as case number CIV 473571. To Defendants' knowledge, this second Complaint  
 7 filed on June 10, 2008, has not yet been served on any Defendants. A copy of this action is attached  
 8 hereto as **Exhibit 2**.

9       3. An order issued from the Superior Court for the County of San Mateo, Dept. 1  
 10 consolidating both actions under case No. CIV 464144. Judge Carol Mittlesteadt held that the  
 11 actions must be consolidated because they included substantially the same facts and the same  
 12 principle parties, and because Plaintiff's attorney had in fact stipulated to the consolidation. Because  
 13 grounds from removal existed as to the complaint filed on June 10, 2008, (Exhibit 2) which was then  
 14 consolidated on June 18, 2008. by order of the Superior Court, removal is being filed within thirty  
 15 days of the earliest service date, as required by 28 U.S.C. § 1446(b). A true and correct copy of  
 16 Judge Mittlesteadt's order of consolidation is attached hereto as **Exhibit 3**.

17       4. Plaintiff has also filed presumably identical Fair Labor Standards Act claims in  
 18 this same Federal court entitled *Daniel Keating-Traynor on behalf of himself and all others similarly*  
*situated v. AC Square Inc., Comcast Inc., Afshin Ghaneh and Andrew Bahmanyar as individuals*  
*and Does 1-60 inclusive "Class Action"* and designated as case number C 08-02907 MHP, which  
 21 although filed, has not yet been served on any party. In the interest of judicial economy and comity  
 22 such claims should be consolidated and heard together to avoid undue hardship and an unnecessary  
 23 and extreme expenditure of judicial resources which would necessarily occur if Plaintiff(s) were  
 24 allowed to simultaneously adjudicate identical FLSA actions in both state and federal court.  
 25 Attached hereto as **Exhibit 4** is a true and correct copy of the Clerk's Notice of Scheduled Case  
 26 Management Conference and Case Summary for United States District Court For the Northern  
 27 District of California San Francisco Division docket showing filing of the above referenced action  
 28 on June 10, 2008.

1           5.     **Jurisdiction:** This action is a civil action of which this Court has original  
 2 jurisdiction under 28 U.S.C. section 1331, and is one that may be removed to this Court by  
 3 Defendants pursuant to the provisions of 28 U.S.C. section 1441(b). Specifically, Plaintiff's Second,  
 4 Third, and Fourth Causes of Action alleging violations of The Fair Labor Standards Act pursuant to  
 5 FLSA 20 U.S.C. Section 201 *et seq.* so that Plaintiff's Complaint states claims under federal law.

6           6.     Even if the Court does not have original jurisdiction over one or more of  
 7 Plaintiff's other causes of action asserted in the Complaint, any such cause of action is  
 8 transactionally related to Plaintiff's Fourth Cause of Action over which this Court does have original  
 9 jurisdiction. Thus, any such cause of action is also removable and subject to this Court's  
 10 supplemental jurisdiction pursuant to 28 U.S.C. §§ 1367(a) and 1441(c).

11          7.     By the filing of this Notice of Removal, Defendants AC SQUARE INC.,  
 12 AFSHIN GHANEH and ANDREW BAHMANYAR do not waive, and hereby expressly reserve,  
 13 their respective rights to assert any substantive or procedural defenses which may apply to the causes  
 14 of action alleged by Plaintiff in the Complaint.

15          8.     **Intradistrict Assignment:** Pursuant to 28 U.S.C. § 1441(a) and Northern  
 16 District Local Rules 3-2(c) and (e), this matter is properly assigned to the San Francisco Division  
 17 because the actions that allegedly give rise to Defendants' liability all occurred in San Mateo  
 18 County.

19           (a)    Santa Mateo County is located within the jurisdiction of the United  
 20 States District Court for the Northern District of California, and therefore, the San Francisco  
 21 Division of this Court is the proper venue for the removal of the State Court Action.

22           (b)    To Defendants' knowledge there are no Doe defendants. However,  
 23 assuming the existence of any, they are and would be fictitious defendants and are not parties to this  
 24 action. Unnamed defendants sued as Does also are not required to join in a removal petition, and  
 25 their citizenship is disregarded for purposes of removal. 28 U.S.C. § 1441(a); *Fristos v. Reynolds*  
 26 *Metal Company*, 615 F.2d 1209, 1213 (9th Cir. 1980).

27          12.    For all of the foregoing reasons, the State Court Action is removable to this  
 28 Court under 28 U.S.C. §§ 1331 and 1441(b).

1 WHEREFORE, Defendants now pray that the above action now pending against  
2 Defendants in the Superior Court for the State of California, County of San Mateo Case No. CIV  
3 464144 Consolidated for all purposes with CIV 473571, be removed therefrom to this Court.

4 Dated: June 19, 2008

5   
6 RONALD A. PETERS  
7 BENJAMIN EMMERT  
8 LILANTHI RAYISHANKAR  
9 LITTLER MENDELSON  
10 A Professional Corporation  
11 Attorneys for Defendants  
12 AC SQUARE INC., AFSHIN GHANEH,  
13 AND ANDREW BAHMANYAR

14 Firmwide:85615569.1 047098.1008  
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CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>DANIEL BERKO SBN 94912 LAW OFFICE OF DANIEL BERKO 819 EDDY STREET SAN FRANCISCO, CA 94109 TELEPHONE NO.: 415/771-6174</b>		FAX NO.: 415/474-3748	FOR COURT USE ONLY
ATTORNEY FOR (Name): <b>DANIEL KEATING-TRAYNOR</b>			<b>RECEIVED</b>
SUPERIOR COURT OF CALIFORNIA, COUNTY OF <b>SAN MATEO</b> STREET ADDRESS: <b>400 COUNTY CENTER</b>			JUN 29 2007
MAILING ADDRESS: CITY AND ZIP CODE: <b>REDWOOD CITY, CA 94063</b>			CLERK OF THE SUPERIOR COURT SAN MATEO COUNTY
BRANCH NAME: <b>UNLIMITED CIVIL JURISDICTION</b>			
CASE NAME: <b>DANIEL KEATING-TRAYNOR vs AC SQUARE et al.</b>			
CIVIL CASE COVER SHEET		Complex Case Designation	CASE NUMBER:
<input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		<input type="checkbox"/> Counter <input type="checkbox"/> Joinder	<b>08464144</b>
Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)			
JUDGE: DEPT:			
Items 1-5 below must be completed (see instructions on page 2).			

## 1. Check one box below for the case type that best describes this case:

## Auto Tort

- Auto (22)  
 Uninsured motorist (46)

## Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

- Asbestos (04)  
 Product liability (24)  
 Medical malpractice (45)  
 Other PI/PD/WD (23)

## Non-PI/PD/WD (Other) Tort

- Business tort/unfair business practice (07)  
 Civil rights (08)  
 Defamation (13)  
 Fraud (16)  
 Intellectual property (19)  
 Professional negligence (25)  
 Other non-PI/PD/WD tort (35)

## Employment

- Wrongful termination (36)  
 Other employment (15)

## Contract

- Breach of contract/warranty (06)  
 Collections (09)  
 Insurance coverage (18)  
 Other contract (37)

## Real Property

- Eminent domain/Inverse condemnation (14)  
 Wrongful eviction (33)  
 Other real property (26)

## Unlawful Detainer

- Commercial (31)  
 Residential (32)  
 Drugs (38)

## Judicial Review

- Asset forfeiture (05)  
 Petition re: arbitration award (11)  
 Writ of mandate (02)  
 Other judicial review (39)

## Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400-3.403)

- Antitrust/Trade regulation (03)  
 Construction defect (10)  
 Mass tort (40)  
 Securities litigation (28)  
 Environmental/Toxic tort (30)  
 Insurance coverage claims arising from the above listed provisionally complex case types (41)

## Enforcement of Judgment

- Enforcement of judgment (20)

## Miscellaneous Civil Complaint

- RICO (27)  
 Other complaint (not specified above) (42)

## Miscellaneous Civil Petition

- Partnership and corporate governance (21)  
 Other petition (not specified above) (43)

2. This case  is  is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a.  Large number of separately represented parties      d.  Large number of witnesses  
 b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve      e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court  
 c.  Substantial amount of documentary evidence      f.  Substantial postjudgment judicial supervision

3. Type of remedies sought (check all that apply):

- a.  monetary      b.  nonmonetary; declaratory or injunctive relief      c.  punitive

4. Number of causes of action (specify): 5

5. This case  is  is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 06/28/2007

DANIEL BERKO

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

## NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a complex case, this cover sheet will be used for statistical purposes only.

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PAGE 02

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 5 Telephone: 415-771-6174  
 6 Facsimile: 415-474-3748  
 7 E-mail: BerkoLaw@SBCglobal.net

**FILED**  
SAN MATEO COUNTY

JUN 29 2007

5 Attorneys for Plaintiffs,  
 6 DANIEL KEATING-TRAYNOR on behalf of himself and all others similarly situated  
 7

Clerk of the Superior Court  
By GEORGE JACKSON  
DEPUTY CLERK

## 8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

## 9 IN AND FOR THE COUNTY OF SAN MATEO

## 10 UNLIMITED JURISDICTION

11  
 12 DANIEL KEATING-TRAYNOR on behalf of himself and all others similarly situated,

13 Case No. CIV 464144

14 Plaintiffs,  
 15 vs.  
 16 AC SQUARE, DOES 1 THROUGH 600, inclusive.  
 17 Defendants.

18  
 19 Plaintiff DANIEL KEATING- TRAYNOR complains of Defendants and each of them as follows:

20 1. Plaintiff is informed and believes and thereupon alleges that Defendant AC

21 SQUARE, INC. and Does 1 through 600 install, disconnect, and upgrade cable television and computer services to consumers who use the services and equipment of Comcast, a provider of cable television and computer services to consumers throughout California.

22 2. Plaintiff does not know the true names of Defendants DOES 1 through 600 inclusive, and therefore sues them by those fictitious names. Plaintiff is informed and believes, and on the basis of that information and belief alleges, that each of those defendants was in some manner legally responsible for the events, happenings, injuries and damages alleged in this

COMPLAINT FOR RESTITUTION, DAMAGES AND INJUNCTIVE RELIEF

complaint.

3. In this complaint, when reference is made to any act of AC SQUARE, INC. (hereafter "AC") such allegations shall mean that the owners, officers, directors, agents, employees or representatives, of AC authorized, ratified, approved such acts, or negligently failed and omitted to supervise its employees and agents while engaged in the management, direction, operation or control of the affairs of the business organization and did so while acting within the course and scope of its employment or agency.

4. Plaintiff brings this action on his own behalf, and on behalf of all persons similarly situated. The class plaintiff represents consists of all persons who were employed by AC as cable television and computer technicians and who install, upgrade, disconnect and provide similar services to consumers who use the services and equipment of Comcast. Plaintiff KEATING worked as a technician and his job included the responsibilities to install, upgrade, disconnect and provide similar services to consumers who use the services and equipment of Comcast. Plaintiff was formerly employed by AC as a cable television and computer technician for the purpose of installing, upgrading, disconnecting and providing similar services to consumers who use the services and equipment of Comcast

5. There are well-defined common of questions of law and fact affecting the class Plaintiffs represent. The class members' claims against Defendants involve questions of common and general interest in that each and every class member worked as an installer of cable television and computer services to consumers who use the services and equipment of Comcast, were not paid for overtime, were paid on a piecemeal basis, did not receive rest breaks and meal breaks as required by California law, had the cost of tolls and other items deducted from their wages, were not reimbursed for gas, cellphone bills, parking tickets or vehicle maintenance or damage all of which involved or occurred while working for AC. In addition, AC failed to pay each class member wages during all hours that they worked. Accordingly, the facts supporting the claim for each class member is identical or substantially similar for Plaintiff and each member of the class and the alleged breach and claim of liability is identical or substantially identical for each member of the class. These questions are such that proof of a state of facts

COMPLAINT FOR RESTITUTION, DAMAGES AND INJUNCTIVE RELIEF

common to the class representatives and to members of the class will entitle each member of the class to the relief requested in this complaint.

6. Plaintiff will fairly and adequately represent the interests of the class, because plaintiff is a member of the class and plaintiff's claims are typical of those in the class.

#### FIRST CAUSE OF ACTION

##### **(VIOLATION OF BUSINESS AND PROFESSIONS CODE §17200)**

7. Plaintiff incorporates herein *in haec verba* all of the allegations, averments, and matters contained in paragraphs 1 through 6 above.

8. Business and Professions Code §17200 et seq. prohibits any business from engaging in unfair competition which it defines as any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising including any act prohibited by Business and Professions Code §17500.

9. AC'S refusal to pay class members the wages due to them, improper deductions from class members' paychecks, and its refusal to pay overtime due are each separately and collectively unfair and unlawful business practices.

10. Each class member is entitled to restitution of all money in which they have an ownership interest which constitutes either (1) the failure to pay wages due or (2) the failure to pay overtime due or (3) the failure to pay for time spent while employed by AC.

11. Plaintiff and the class are entitled to an Order or Injunction, prohibiting Defendant from continuing to engage in the conduct alleged here.

#### SECOND CAUSE OF ACTION

##### **(VIOLATION OF LABOR CODE 2802)**

12. Plaintiff incorporates by reference all of the allegations, averments and matters contained in paragraph 1 through 6 inclusive as if set forth at length herein *in haec verba*.

28 COMPLAINT FOR RESTITUTION, DAMAGES AND INJUNCTIVE RELIEF

1           13. While employed in the customary business of AC and in the direct consequence of  
2 their duties, class members were required to expend his or her own monies in direct consequence  
3 of the discharge of his or her duties, and in addition suffered losses to his or her own property for  
4 which Defendants must indemnify class members, including, but not limited to the purchase of a  
5 vehicle, vehicle maintenance, gas, tools, and equipment, including safety belts and other  
6 equipment.

7           **THIRD CAUSE OF ACTION**

8           **(FAILURE TO PAY OVERTIME WAGES)**

9           14. Plaintiff incorporates by reference all of the allegations, averments and matters  
10 contained in paragraph 1 through 6 inclusive as if set forth at length herein *in haec verba*.

11           15. AC fails ands refuses to pay class members overtime for time worked in excess of eight  
12 hours per day or forty hours per week.

13           16. Labor Code 1198 provides that it is unlawful to employ persons for longer than the  
14 hours set by the Industrial Welfare Commission or under conditions prohibited by the applicable  
15 wage order.

16           17. At all times relevant herein, the Industrial Welfare Commission Wage Order No. 9-  
17 2001 (8 Cal. Code Reg. 11090) and Labor Code 510(a) applied to the employment of class  
18 members by Defendant. Said wage order and Labor Code section provide that any employee  
19 employed for more than 8 hours a day or 40 hours per week are to be paid at the rate on 1.5 times  
20 the normal hourly rate for hours in excess of 8 per day or 40 per week, and or double time under  
21 certain conditions.

22           18. Pursuant to Labor Code 1194(a), Plaintiffs are entitled to reasonable attorney's fees  
23 and costs.

24           19. Pursuant to Labor Code 558(a)(1), each class member is entitled to a civil penalty of  
25  
26           COMPLAINT FOR RESTITUTION, DAMAGES AND INJUNCTIVE RELIEF  
27  
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1 \$50 for the initial work period that each class member was underpaid and \$100 for each  
2 successive period pay period that he or she was not paid overtime wages as required by law.  
3

2 **FOURTH CAUSE OF ACTION**  
3

4 **(FAILURE TO FURNISH INFORMATION REQUIRED BY LABOR CODE 226)**  
5

6 20. Plaintiff incorporates by reference all of the allegations, averments and matters  
7 contained in paragraph 1 through 6 inclusive as if set forth at length herein *in haec verba*.  
8

9 21. Defendant has willfully refused to semimonthly or at the time of each payment of  
10 wages, furnish each of his or her employees, either as a detachable part of the check, draft, or  
11 voucher paying the employee's wages, or separately when wages are paid by personal check or  
12 cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours  
13 worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate  
14 if the employee is paid on a piece-rate basis, and (4) all deductions, provided that all deductions  
15 made on written orders of the employee may be aggregated and shown as one  
16

17 22. Each class member is entitled to a) is entitled to recover the greater of all actual  
18 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one  
19 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding  
20 an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and  
21 reasonable attorney's fees.

22 **FIFTH CAUSE OF ACTION**  
23

24 **(ON BEHALF OF DANNY KEATING-TRAYNOR INDIVIDUALLY)**  
25

26 **(FAILURE TO PAY WAGES DUE)**  
27

28 23. Plaintiff incorporates herein all of the allegations, averments and matters contained in  
29 paragraphs 1- 3 above as if set forth at length *in haec verba*.

26 24. Plaintiff worked as a trainee for approximately 80 hours for which he was not paid. He  
27 is entitled to at least minimum wage plus any overtime for those hours.  
28

COMPLAINT FOR RESTITUTION, DAMAGES AND INJUNCTIVE RELIEF

1  
2 **WHEREFORE PLAINTIFFS PRAY JUDGMENT AS FOLLOW:**  
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4 **ON ALL CAUSES OF ACTION:**  
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1. General damages according to proof
  2. Special damages according to proof;
  3. Interest on all sums awarded;
  4. Costs of suit;
  5. Such other, and/or further relief as is just and proper.

Dated: June 28, 2007

DANIEL BERKO  
Attorney for Plaintiff DANNY TRAYNOR-  
KEATING on behalf of themselves  
and all those similarly situated



SUM-100

**SUMMONS**  
**(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:****(AVISO AL DEMANDADO):**

AC SQUARE, INC.; COMCAST, INC.; AFSHIN GHANEH; ANDREW BAHMANYAR; and DOES 1-60 inclusive

**YOU ARE BEING SUED BY PLAINTIFF:****(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

DANIEL KEATING-TRAYNOR on behalf of himself and all others similarly situated

FOR COURT USE ONLY  
(SOLO PARA USO DE LA CORTE)FILED  
SAN MATEO COUNTY

JUN 10 2008

Clark at the Superior Court  
By \_\_\_\_\_  
DEPUTY CLERK

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/seithelp](http://www.courtinfo.ca.gov/seithelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/seithelp](http://www.courtinfo.ca.gov/seithelp)), or by contacting your local court or county bar association.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.courtinfo.ca.gov/seithelp/espanol](http://www.courtinfo.ca.gov/seithelp/espanol)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte lo podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California, ([www.courtinfo.ca.gov/seithelp/espanol](http://www.courtinfo.ca.gov/seithelp/espanol)) o poniéndose en contacto con la corte o el colegio de abogados locales.

The name and address of the court is:

(El nombre y dirección de la corte es):

SAN MATEO SUPERIOR COURT  
400 COUNTY CENTER  
REDWOOD CITY, CA 94063

CASE NUMBER

(Número)

CV 473571

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

DATE: JUN 10 2008 JOHN C. FITTON  
(Fecha)Clerk, by \_\_\_\_\_, Deputy  
(Secretario) \_\_\_\_\_ (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

**NOTICE TO THE PERSON SERVED: You are served**

1.  as an individual defendant.  
2.  as the person sued under the fictitious name of (specify):

3.  on behalf of (specify):

under: <input type="checkbox"/>	CCP 416.10 (corporation)	<input type="checkbox"/>	CCP 416.60 (minor)
<input type="checkbox"/>	CCP 416.20 (defunct corporation)	<input type="checkbox"/>	CCP 416.70 (conservatee)
<input type="checkbox"/>	CCP 416.40 (association or partnership)	<input type="checkbox"/>	CCP 416.90 (authorized person)
<input type="checkbox"/> other (specify):			

4.  by personal delivery on (date):

**Daniel Berko - SBN 94912**  
**LAW OFFICE OF DANIEL BERKO**  
1      819 Eddy Street  
2      San Francisco, CA 94109  
3      Telephone: 415-771-6174  
4      Facsimile: 415-474-3748  
E-mail: BerkoLaw@SBCglobal.net

**FILED  
SAN MATEO COUNTY**

JUN 10 2008

Clerk of the Superior Court  
By   
DEPUTY CLERK

DBVb

6 Attorneys for Plaintiffs,  
**DANIEL KEATING-TRAYNOR** on behalf of himself  
and all others similarly situated

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR THE COUNTY OF SAN MATEO  
UNLIMITED JURISDICTION**

12 DANIEL KEATING-TRAYNOR on )  
behalf of himself and all others similarly )  
situated, )  
13 )  
Plaintiffs, )  
14 -vs- )  
15 AC SQUARE, INC.; COMCAST INC.; )  
AFSHIN GHANEH; ANDREW )  
16 BAHMANYAR; and DOES 1-60 )  
inclusive, )  
17 )  
Defendants. )

Case No. **CV 473571**

COMPLAINT FOR RESTITUTION,  
DAMAGES AND INJUNCTIVE  
RELIEF

---

CLASS ACTION

19 Plaintiff DANIEL KEATING-TRAYNOR complains of Defendants and each of them as  
20 follows:

21       1. Plaintiff is informed and believes and thereupon alleges that Defendants AC  
22      SQUARE, INC., COMCAST INC, AFSHIN GHANEH, ANDREW BAHMANYAR and Does 1  
23      through 60 employ cable technicians who install, disconnect, and upgrade cable television and  
24      computer services to consumers who use the services and equipment of Comcast, a provider of  
25      cable television and computer services to consumers throughout California.

26       2. Plaintiff does not know the true names of Defendants DOES 1-60 inclusive, and  
27 therefore sues them by those fictitious names. Plaintiff is informed and believes, and on the basis  
28 of that information and belief alleges, that each of those defendants was in some manner legally

1 responsible for the events, happenings, injuries and damages alleged in this complaint. Plaintiff  
2 is informed and believes and thereupon alleges that each of the Does 1-60 and all named  
3 Defendants encouraged, supported, aided, advised, agreed upon and abetted the violations that  
4 are alleged in this complaint.

5 3. In this complaint, when reference is made to any act of AC SQUARE, INC.  
6 (hereafter "AC") such allegations shall mean that the owners, officers, directors, agents,  
7 employees or representatives, of AC authorized, ratified, approved such acts, or negligently  
8 failed and omitted to supervise its employees and agents while engaged in the management,  
9 direction, operation or control of the affairs of the business organization and did so while acting  
10 within the course and scope of its employment or agency.

11 4. In this complaint, when reference is made to any act of COMCAST, INC.  
12 (hereafter "COMCAST") such allegations shall mean that the owners, officers, directors, agents,  
13 employees or representatives, of COMCAST authorized, ratified, approved such acts, or  
14 negligently failed and omitted to supervise its employees and agents while engaged in the  
15 management, direction, operation or control of the affairs of the business organization and did so  
16 while acting within the course and scope of its employment or agency.

17 5. Defendant AFSHIN GHANEH is responsible for the payroll and business practices of  
18 AC Square that are alleged herein. Afshin Ghaneh also owns AC Square. Defendant ANDREW  
19 BAHMANYAR is also responsible for the payroll and business practices of AC Square that are  
20 alleged herein.

21 6. Defendant Comcast conspired with and aided and abetted Defendants AC Square,  
22 Afshin Ghaneh and Andrew Bahmanyar and Does 1 through 60 in taking the actions alleged  
23 herein. moreover, by shifting responsibility for the installation of Comcast equipment to AC  
24 Square and knowingly allowing AC to systematically underpay its cable technicians including  
25 plaintiff and all class members, COMCAST was able to unfairly compete in the market place by  
26 reducing the true costs of installing and servicing its equipment through the use of laborers paid  
27 less than lawful wages.

28 7. Defendant COMCAST, Afshin Ghaneh and Andrew Bahmanyar and Does 1 through 60

1 aided, abetted, encouraged, supported, advised and benefited from AC Square's violation of  
2 California and federal wage and hour laws as alleged herein. In addition, Afshin Ghaneh has  
3 diverted to himself funds that should have been and were available to pay Plaintiff and all AC  
4 Square employees a lawful wage.

5 8. Plaintiff brings this action on his own behalf, and on behalf of all persons similarly  
6 situated. The class plaintiff represents consists of all persons who were employed by AC as  
7 cable television and computer technicians and who install, upgrade, disconnect and provide  
8 similar services to consumers who use the services and equipment of Comcast. Plaintiff  
9 KEATING worked as a technician and his job included the responsibilities to install, upgrade,  
10 disconnect and provide similar services to consumers who use the services and equipment of  
11 Comcast. Plaintiff was formerly employed by AC Square as a cable television and computer  
12 technician for the purpose of installing, upgrading, disconnecting and providing similar services  
13 to consumers who use the services and equipment of Comcast

14 9. There are well-defined common of questions of law and fact affecting the class  
15 Plaintiffs represent. The class members' claims against Defendants involve questions of common  
16 and general interest in that each and every class member (1) worked as an installer of cable  
17 television and computer services to consumers who use the services and equipment of Comcast,  
18 (2)(a) were not paid for overtime either when he worked more than an 8 hour day, 2(b) or more  
19 than a forty hour week 2(c) worked the seventh day in a row 2(d) worked over eight hours on the  
20 seventh day, (3) were paid on a piecemeal basis, (4) did not receive rest breaks or meal breaks as  
21 required by California law, (5) were subject to improper deductions from their wages, and (6)  
22 were not reimbursed for gas, cell phone bills, parking tickets, and vehicle expenses including,  
23 but not limited to, insurance, vehicle repairs or vehicle maintenance or damage to their vehicles  
24 which involved work done for and/ or occurred while working for AC. In addition, (7) AC failed  
25 to pay each class member wages during all hours that they worked. In addition, (8) AC  
26 intentionally failed to pay all wages due when employees left the company. (9) Class members  
27 were not paid for split shifts as required by law. (10) AC required employees and all class  
28 members do work for no pay under various circumstances such as 10(a) staff meetings, 10(b)

1 picking up work orders and equipment, and 10(c) trips to customer locations where no customer  
2 was present so as to allow an employee/class member to perform services for which he came to  
3 the customer's location (except for payment of a \$1.00 fee). In addition, (11) AC failed to  
4 provide information required to be on wage stubs under California law to all class members. (12)  
5 In addition, AC and all other defendants failed to pay Plaintiffs for time spent transporting  
6 COMCAST Equipment. Accordingly, the facts supporting the claim for each class member is  
7 identical or substantially similar for Plaintiff and each member of the class and the alleged breach  
8 and claim of liability is identical or substantially identical for each member of the class. These  
9 questions are such that proof of a state of facts common to the class representatives and to  
10 members of the class will entitle each member of the class to the relief requested in this  
complaint.

11 10. Plaintiff will fairly and adequately represent the interests of the class, because plaintiff  
12 is a member of the class and plaintiff's claims are typical of those in the class.  
13

#### **FIRST CAUSE OF ACTION**

##### **(CONSPIRACY TO VIOLATE BUSINESS AND PROFESSIONS CODE §17200)**

14 11. Plaintiff incorporates herein *in haec verba* all of the allegations, averments, and  
15 matters contained in paragraphs 1-10 above.  
16

17 12. Business and Professions Code §17200 et seq. prohibits any business from engaging in  
18 unfair competition which it defines as any unlawful, unfair or fraudulent business act or practice  
19 and unfair, deceptive, untrue or misleading advertising including any act prohibited by Business  
20 and Professions Code §17500.  
21

22 13. AC Square's refusal to pay class members the wages due to them as alleged herein,  
23 which conduct was done in concert and pursuant to agreement with Comcast, Afshin Ghaneh and  
24 Andrew Bahmanyar, employees at Comcast, others, and Does 1 through 60, and which was  
25 aided, abetted, ordered, supported and encouraged by all defendants, and its improper deductions  
26 from class members' paychecks, are each separately and collectively unfair and unlawful  
27  
28

business practices.

2           14. Each class member is entitled to restitutionary damages which constitutes (1) the  
3 failure to pay wages due or (2) the failure to pay overtime due or (3) the failure to pay for time  
4 spent while employed by AC or (4) the failure to reimburse for expenses or (5) the failure to pay  
5 a split shift or show up premium when required by law and (6) all other failures to pay money  
6 due. Moreover, to the extent that Defendants, and any of them, received greater profits from their  
7 business than they otherwise would have had AC obeyed California Labor Laws, Defendants  
8 must disgorge all such profits to the extent necessary to pay Plaintiffs the money owed to them.  
9

11 15. Plaintiff and the class are entitled to an Order or Injunction, prohibiting Defendants from  
12 continuing to engage in the conduct alleged here.

## **SECOND CAUSE OF ACTION**

**(VIOLATION OF FAIR LABOR STANDARD ACT)**

**(AGAINST ALL DEFENDANTS)**

16 Plaintiff incorporates herein all of the allegations, averments and matters contained in  
17 paragraphs 1-10 and 12-15, inclusive as if set forth at length herein *in haec verba*.

17. AC Square, Comcast, Afshin Ghaneh, Andrew Bahmanyar and Does 1 through 60 fail to  
18 pay overtime to class members even though it is clear that class members are entitled to overtime  
19 for each workweek that they work over 40 hours in a week.  
20

22        18. AC Square, Comcast, Afshin Ghaneh and Andrew Bahmanyar's failure to pay overtime  
23 due to class members was a willful violation of the Fair Labor Standards Act (FLSA), because it  
24 would be impossible for Defendants not to be aware that the class members were not exempt  
25 from overtime requirements and yet they failed to pay overtime and continue to fail to pay  
26 overtime through the present time.

19. Because all Defendants willfully failed to comply with the FLSA, all Plaintiffs are

1 entitled to damages consisting of the overtime wages they should have been paid and liquidated  
2 damages in an amount equal to the unpaid overtime plus interest at the legal rate and reasonable  
attorney's fees incurred in enforcing the rights.

### **THIRD CAUSE OF ACTION**

**(CONSPIRACY TO VIOLATE THE FAIR LABOR STANDARD ACT)**  
**(AGAINST ALL DEFENDANTS)**

6 20. Plaintiff incorporates herein all of the allegations, averments and matters contained in  
7 paragraphs 1-10, 12 -15 and 17-19, inclusive as if set forth at length herein in *haec verba*.

9        21. Defendants and each of them combined together in a tacit and express agreement to  
10      knowingly and intentionally deprive Plaintiff and all class members of their rights to overtime  
11      pay as provided by the FLSA.

#### **FOURTH CAUSE OF ACTION**

**(FAILURE TO PAY MONIES DUE AT TERMINATION OF EMPLOYMENT)**

14 22. Plaintiff incorporates herein all of the allegations, averments and matters contained in  
15 paragraphs 1-10, 12-15, 17-19 and 21, inclusive as if set forth at length herein *in haec verba*.

16       23. Defendant AC Square, as to all class members who no longer work for it, willfully  
17      failed to pay all monies due at the termination of the employment relationship either immediately  
18      or within 72 hours.

20       24. Each class member who is no longer employed by AC Square is entitled to thirty day's  
21 wages in addition to all other relief.

## FIFTH CAUSE OF ACTION

(CONSPIRACY TO VIOLATE LABOR CODE SECTION 558)

**(AGAINST ALL DEFENDANTS)**

25 Plaintiff incorporates herein all of the allegations, averments and matters contained in  
26 paragraphs 1-10, 12-15, 17-19, 21, 23-24 inclusive as if set forth at length herein *in haec verba.*

27 26. Labor Code section 558 provides that any employer or other person acting on behalf of

the employer, who violates or causes to be violated any provision of chapter of the Labor Code  
1 regulating payment of wages or any provision regulating hours and days of work and any order of  
2 the Industrial Welfare Commission shall be liable for \$50.00 penalty for the first violation of the  
3 first pay period as to any employee and \$100.00 for each subsequent violation for each  
4 subsequent pay period for which the employee was underpaid in addition to an amount sufficient  
5 to recover underpaid wages. Wages recovered under section 558 are the property of the  
6 underpaid employee.

8       27. By engaging in the conduct and omissions alleged herein, Defendants have intentionally  
9       violated numerous provisions of IWC wage orders and statutes resulting wages including but not  
10      limited to all those referenced in this complaint.  
11

12       28. Each class member and each employee is entitled to all wages due to them pursuant to  
13       Labor Code §558.

14       29. Because the violations of the wage orders and Labor Code provisions relating to payment  
15       of wages was intentional, and Defendants knowingly took advantage of its employees and caused  
16       them substantial economic harm, Plaintiffs are entitled to punitive damages against all  
17       Defendants.  
18

19       **WHEREFORE PLAINTIFF PRAYS JUDGMENT AS FOLLOW:**

20       **ON ALL CAUSES OF ACTION:**

- 21       1. General damages according to proof;  
22       2. Special damages according to proof;  
23       3. Interest on all sums awarded;  
24       4. Costs of suit;  
25       5. Such other, and/or further relief as is just and proper.  
26

27       **ON THE FIFTH CAUSE OF ACTION:**

6. Punitive Damages according to proof.

1 Dated: June 9, 2008

2  
3 DANIEL BERKO, Attorney for Plaintiff  
4 DANNY KEATING-TRAYNOR, on behalf of themselves  
5 and all those similarly situated  
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AFFIDAVIT OF PERSONAL DELIVERY

Hunting Athaynat

vs

FILED  
SAN MATEO COUNTY

JUN 10 2008

Clerk of the Superior Court  
~~BY~~ ~~Deputy Clerk~~

KC Square

CIV 473571  
CASE #

DOCUMENTS

Endorsed filed copies of the Complaint, Summons, Notice of Case Management Conference and ADR Packet information.

I declare under penalty of perjury that I delivered back to the customer, a true copy of the foregoing documents. Executed on the above filed date at the Hall of Justice & Records in Redwood City, CA 94063.

By: G. JACKSON  
Deputy Court Clerk



**Superior Court of California  
County of San Mateo  
Civil Department  
400 County Center  
Redwood City, CA 94063-1655  
(650)363-4599  
[www.sanmateocourt.org](http://www.sanmateocourt.org)**

DANIEL KEATING-TRAYNOR Plaintiff(s) vs. AC SQUARE, INC. Defendant(s)	<b>Notice of Complex Case Status Conference</b>  Case No.: CIV 473571      Date: 08/12/08  Time: 9:00 AM <b>Dept. 21</b>
Title: DANIEL KEATING-TRAYNOR VS AC SQUARE INC	

You are hereby given notice of your Complex Case Status Conference. The date, time and department have been written above. At this conference, the Presiding Judge will decide whether this action is a complex case within the meaning of California Rules of Court ("CRC"), Rule 3.400, subdivision (a) and whether it should be assigned to a single judge for all purposes.

1. In accordance with applicable **San Mateo County Local Rule 2.30**, you are hereby ordered to:
  - a. Serve copies of this notice, your Civil Case Cover Sheet, and your Certificate Re: Complex Case Designation on all named parties in this action no later than service of your first appearance pleadings.
  - b. Give reasonable notice of the Complex Case Status Conference to all named parties in this action, even if they have not yet made a first appearance or been formally served with the documents listed in subdivision (a). Such notice shall be given in the same manner as required for an ex parte application pursuant to CRC 3.1203.

**2. If you fail to follow the orders above, you are ordered to show cause why you should not be sanctioned. The Order To Show Cause hearing will be at the same time as the Complex Case Status Conference. Sanctions may include monetary, evidentiary or issue sanctions as well as striking pleadings and/or dismissal.**

3. An action is provisionally a complex case if it involves one or more of the following types of claims: (1) antitrust or trade regulation claims; (2) construction defect claims involving many parties or structures; (3) securities claims or investment losses involving many parties; (4) environmental or toxic tort claims involving many parties; (5) claims involving massive torts; (6) claims involving class actions; or (7) insurance coverage claims arising out of any of the claims listed in subdivisions (1) through (6). The Court shall treat a provisionally complex action as a complex case until the Presiding Judge has the opportunity to decide whether the action meets the definition in CRC 3.400(a).

4. Any party who files either a Civil Case Cover Sheet (pursuant to CRC 3.401) or a counter or joinder Civil Case Cover Sheet (pursuant to CRC 3.402, subdivision (b) or (c)), designating an action as a complex case in Items 1, 2 and/or 5, must also file an accompanying Certificate Re: Complex Case Designation in the form prescribed by the Court. The certificate must include supporting information showing a reasonable basis for the complex case designation being sought. Such supporting information may include, without limitation, a brief description of the following factors as they pertain to the particular action: (1) management of a large number of

separately represented parties; (2) complexity of anticipated factual and/or legal issues; (3) numerous pretrial motions that will be time-consuming to resolve; (4) management of a large number of witnesses or a substantial amount of documentary evidence; (5) coordination with related actions pending in one or more courts in other counties, states or countries or in a federal court; (6) whether or not certification of a putative class action will in fact be pursued; and (7) substantial post-judgment judicial supervision.

For further information regarding case management policies and procedures, see the court website at [www.sanmateocourt.org](http://www.sanmateocourt.org)

\* Telephonic appearances at Complex Case Status Conference are available by contacting CourtCall, LLC, an independent vendor, at least 5 business days prior to the scheduled conference.

#### CLERK'S CERTIFICATE OF MAILING

I hereby certify that I am the clerk of this Court, not a party to this cause; that I served a copy of this notice on the below date, by placing a copy thereof in separate sealed envelopes addressed to the address shown by the records of this Court, and by then sealing said envelopes and depositing same, with postage fully pre-paid thereon, in the United States Mail at Redwood City, California.

Date: 06/10/08

John C. Fitton,  
Court Executive Officer/Clerk

By: GEORGE JACKSON  
Deputy Clerk

Copies mailed to:

DANIEL BERKO  
819 EDDY STREET  
SAN FRANCISCO CA 94109

## NOTICE OF CASE MANAGEMENT CONFERENCE

*Meeting - May 14, 2008***FILED**

SAN MATEO COUNTY

vs.

JUN 10 2008

Case No. **CIV 473571**Date: **OCT 24 2008**

Time: 9:00 a.m.

*AC SPC at e*

Clerk of the Superior Court

BY **DEPUTY CLERK**

Dept. 3 - on Tuesday &amp; Thursday

Dept. 28 - on Wednesday &amp; Friday

You are hereby given notice of your Case Management Conference. The date, time and department have been written above.

1. In accordance with applicable California Rules of Court and Local Rules 2.3(d)1-4 and 2.3(m), you are hereby ordered to:
  - a. Serve all named defendants and file proofs of service on those defendants with the court within 60 days of filing the complaint (CRC 201.7).
  - b. Serve a copy of this notice, Case Management Statement and ADR Information Sheet on all named parties in this action.
  - c. File and serve a completed Case Management Statement at least 15 days before the Case Management Conference [CRC 212(g)]. Failure to do so may result in monetary sanctions.
  - d. Meet and confer, in person or by telephone, to consider each of the issues identified in CRC 212(f) no later than 30 days before the date set for the Case Management Conference.
  
2. If you fail to follow the orders above, you are ordered to show cause why you should not be sanctioned. The Order To Show Cause hearing will be at the same time as the Case Management Conference hearing. Sanctions may include monetary, evidentiary or issue sanctions as well as striking pleadings and/or dismissal.
  
3. Continuances of case management conferences are highly disfavored unless good cause is shown.
4. Parties may proceed to an appropriate dispute resolution process ("ADR") by filing a Stipulation To ADR and Proposed Order (see attached form). If plaintiff files a Stipulation To ADR and Proposed Order electing to proceed to judicial arbitration, the Case Management Conference will be taken off the court calendar and the case will be referred to the Arbitration Administrator. If plaintiffs and defendants file a completed stipulation to another ADR process (e.g., mediation) 10 days prior to the first scheduled case management conference, the case management conference will be continued for 90 days to allow parties time to complete their ADR session. The court will notify parties of their new case management conference date.
5. If you have filed a default or a judgment has been entered, your case is not automatically taken off the Case Management Conference Calendar. If "Does", "Roes", etc. are named in your complaint, they must be dismissed in order to close the case. If any party is in bankruptcy, the case is stayed only as to that named party.
6. You are further ordered to appear in person\* (or through your attorney of record) at the Case Management Conference noticed above. You must be thoroughly familiar with the case and fully authorized to proceed.
7. The Case Management judge will issue orders at the conclusion of the conference that may include:
  - a. Referring parties to voluntary ADR and setting an ADR completion date;
  - b. Dismissing or severing claims or parties;
  - c. Setting a trial date.
8. The Case Management judge may be the trial judge in this case.

For further information regarding case management policies and procedures, see the court website at [www.sanmateocourt.org](http://www.sanmateocourt.org).

\* Telephonic appearances at case management conferences are available by contacting CourtCall, LLC, an independent vendor, at least 5 business days prior to the scheduled conference (see attached CourtCall information).

# Complaints/Parties

[Home](#)      [Complaints/Parties](#)      [Actions](#)  
[Pending Hearings](#)      [Images](#)      [Case Report](#)

## Case CIV473571 - DANIEL KEATING-TRAYNOR VS AC SQUARE INC

**Complaint Number:** 1

**Complaint Type:** COMPLAINT

**Filing Date:** 06/10/2008

**Complaint Status:** ACTIVE

Party Number	Party Type	Party Name	Attorney	Party Status
1	PLAINTIFF	DANIEL KEATING-TRAYNOR	BERKO, DANIEL	First Paper Fee Paid
2	DEFENDANT	AC SQUARE, INC.	Unrepresented	Serve Required (WaitS)
3	DEFENDANT	COMCAST INC.	Unrepresented	Serve Required (WaitS)
4	DEFENDANT	AFSHIN GHANEH	Unrepresented	Serve Required (WaitS)
5	DEFENDANT	ANDREW BAHMANYAR	Unrepresented	Serve Required (WaitS)

# Actions

[Home](#)      [Complaints/Parties](#)      [Actions](#)  
[Pending Hearings](#)      [Images](#)      [Case Report](#)

## Case CIV473571 - DANIEL KEATING-TRAYNOR VS AC SQUARE INC

[Move To This Date](#)

Viewed	Date	Action Text	Disposition	Image
N	10/24/2008 9:00 AM DEPT. 28	CASE MANAGEMENT CONFERENCE		
N	08/12/2008 9:00 AM DEPT. PJLM	COMPLEX CASE STATUS CONFERENCE		
	06/10/2008	COMPLEX LITIGATION FEE OF \$550.00 RECEIVED FROM DANIEL KEATING-TRAYNOR (PLAINTIFF).	-	
N	06/10/2008	CIVIL CASE COVERSHEET RECEIVED	-	
N	06/10/2008	AFFIDAVIT OF PERSONAL DELIVERY BY G JACKSON FILED	-	
N	06/10/2008	30 DAY SUMMONS, ISSUED AND FILED.	-	
N	06/10/2008	(S) COMPLAINT FILED	-	

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): <b>DANIEL BERKO</b> LAW OFFICE OF DANIEL BERKO 819 EDDY STREET SAN FRANCISCO, CA 94109 TELEPHONE NO.: 415/771-6174 FAX NO. 415/474-3748 ATTORNEY FOR (Name): <b>DANIEL KEATING-TRAYNOR</b>		SBN 94912	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN MATEO STREET ADDRESS 400 COUNTY CENTER MAILING ADDRESS CITY AND ZIP CODE REDWOOD CITY, CA 94063 BRANCH NAME UNLIMITED CIVIL JURISDICTION		<b>RECEIVED</b> <b>JUN 10 2008</b> <b>CLERK OF THE SUPERIOR COURT</b> <b>SAN MATEO COUNTY</b>	
CASE NAME: <b>DANIEL KEATING-TRAYNOR -vs- AC SQUARE et al.</b>			
<b>CIVIL CASE COVER SHEET</b> <input checked="" type="checkbox"/> Unlimited <input type="checkbox"/> Limited (Amount demanded exceeds \$25,000)      (Amount demanded is \$25,000 or less)		<b>Complex Case Designation</b> <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	<b>CASE NUMBER</b> <b>CV 473571</b> <b>JUDGE:</b> <b>DEPT:</b>

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

<b>Auto Tort</b>	<b>Contract</b>	<b>Provisionally Complex Civil Litigation</b>
<input type="checkbox"/> Auto (22)	<input type="checkbox"/> Breach of contract/warranty (06)	<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Uninsured motorist (46)	<input type="checkbox"/> Rule 3.740 collections (09)	<input type="checkbox"/> Construction defect (10)
<b>Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort</b>	<input type="checkbox"/> Other collections (09)	<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Asbestos (04)	<input type="checkbox"/> Insurance coverage (18)	<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Product liability (24)	<input type="checkbox"/> Other contract (37)	<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Medical malpractice (45)	<input type="checkbox"/> Eminent domain/Inverse condemnation (14)	<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
<input type="checkbox"/> Other PI/PD/WD (23)	<input type="checkbox"/> Wrongful eviction (33)	
<b>Non-PI/PD/WD (Other) Tort</b>	<input type="checkbox"/> Other real property (26)	
<input checked="" type="checkbox"/> Business tort/unfair business practice (07)	<b>Unlawful Detainer</b>	<b>Enforcement of Judgment</b>
<input type="checkbox"/> Civil rights (08)	<input type="checkbox"/> Commercial (31)	<input type="checkbox"/> Enforcement of judgment (20)
<input type="checkbox"/> Defamation (13)	<input type="checkbox"/> Residential (32)	<b>Miscellaneous Civil Complaint</b>
<input type="checkbox"/> Fraud (16)	<input type="checkbox"/> Drugs (38)	<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Intellectual property (19)	<b>Judicial Review</b>	<input type="checkbox"/> Other complaint (not specified above) (42)
<input type="checkbox"/> Professional negligence (25)	<input type="checkbox"/> Asset forfeiture (05)	<b>Miscellaneous Civil Petition</b>
<input type="checkbox"/> Other non-PI/PD/WD tort (35)	<input type="checkbox"/> Petition re: arbitration award (11)	<input type="checkbox"/> Partnership and corporate governance (21)
<b>Employment</b>	<input type="checkbox"/> Writ of mandate (02)	<input type="checkbox"/> Other petition (not specified above) (43)
<input type="checkbox"/> Wrongful termination (36)	<input type="checkbox"/> Other judicial review (39)	
<input type="checkbox"/> Other employment (15)		

2. This case  is  not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:

- a.  Large number of separately represented parties
- b.  Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
- c.  Substantial amount of documentary evidence
- d.  Large number of witnesses
- e.  Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
- f.  Substantial postjudgment judicial supervision

3. Remedies sought (check all that apply): a.  monetary b.  nonmonetary; declaratory or injunctive relief c.  punitive

4. Number of causes of action (specify): 5

5. This case  is  not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: 06/10/2008

DANIEL BERKO

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

**NOTICE**

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code) (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2



1 RONALD A. PETERS, Bar No. 169895  
 2 BENJAMIN A. EMMERT, Bar No. 212157  
 3 LITTLER MENDELSON  
 4 A Professional Corporation  
 5 50 West San Fernando Street  
 6 15th Floor  
 7 San Jose, CA 95113-2303  
 Telephone: 408.998.4150  
 Facsimile: 408.288.5686  
 E-Mail: rpeters@littler.com

8 Attorneys for Defendant  
 9 AC SQUARE, INC.

**ENDORSED FILED**  
 SAN MATEO COUNTY

JUN 19 2008

Clerk of the Superior Court  
 By Siolo S. Sala  
 DEPUTY CLERK

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF SAN MATEO

10 DANIEL KEATING-TRAYNOR, on  
 11 behalf of himself and all others similarly  
 12 situated,

13 Plaintiffs,

14 v.  
 15 AC SQUARE, DOES 1 THROUGH 600,  
 inclusive,

16 Defendants.

17 DANIEL KEATING-TRAYNOR, on  
 18 behalf of himself and all others similarly  
 situated,

19 Plaintiffs,

20 v.  
 21 AC SQUARE, INC.; COMCAST INC.;  
 AFSHIN GHANEH; ANDREW  
 22 BAHMANYAR; and DOES 1 THROUGH  
 60, inclusive,

23 Defendants.

Case No. CIV 464144

**CIV**  
**[PROPOSED] ORDER CONSOLIDATING**  
**RELATED ACTIONS CIV 464144 AND CIV**  
**473571**

Date: June 18, 2008  
 Time: 4:00 p.m.  
 Dept.: 1  
 Honorable Carol L. Mittlesteadt

Case No. CIV 473571

25 FOR GOOD CAUSE SHOWN the action entitled *Daniel Keating-Traynor, on behalf*  
 26 *of himself and all other similarly situated, Plaintiffs vs. AC Square, Inc.; Comcast, Inc.; Afshin*  
 27 *Ghaneh; Andrew Bahmanyar; and Does 1 through 60 inclusive, Defendants*, San Mateo County  
 28 Superior Court number CIV 473571, filed June 10, 2008 is hereby consolidated for all purposes with

Case No. CIV 464144

**ORDER CONSOLIDATING RELATED ACTIONS NO. CIV 464144 AND CIV 473571**

1 the action entitled *Daniel Keating-Traynor, on behalf of himself and all other similarly situated,*  
2 *Plaintiffs, vs. AC Square, Inc., Does 1 through 600 inclusive, Defendants*, San Mateo County  
3 Superior Court number CIV 464144, filed June 29, 2007. All documents shall be filed under the  
4 case number of the case filed first, case number CIV 464144.

5  
6 Dated: JUN 18 2008

CAROL MITTLESTEADT

7 JUDGE OF THE SUPERIOR COURT  
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9  
10 Firmwide: 85604138.1 047098.1008  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

DANIEL KEATING-TRAYNOR,

No. C 08-02907 MHP

Plaintiff(s),

**CLERK'S NOTICE**  
**(Scheduling Case Management Conference**  
**in Reassigned Case)**

v.

AC SQUARE et al,

Defendant(s).

This case, having been reassigned to the Honorable Marilyn Hall Patel and all pending hearing dates thus vacated, is hereby scheduled for a case management conference on **Monday, September 15, 2008, at 4:00 p.m.** A Joint Case Management Statement is due ten days prior to the conference. Plaintiff is responsible for forwarding a copy of the form for the Joint Case Management Statement on all defendants, and shall also serve a copy of this notice on all defendants.

Richard W. Wieking  
Clerk, U.S. District Court

  
Anthony Bowser, Deputy Clerk to the  
Honorable Marilyn Hall Patel  
(415) 522-3140

Dated: June 13, 2008

**3:08-cv-02907-MHP Keating-Traynor v. AC Square et al**

Marilyn H. Patel, presiding

Date filed: 06/11/2008

Date of last filing: 06/13/2008

**Case Summary**

Office: San Francisco

Filed: 06/11/2008

Jury Demand: Plaintiff

Demand:

Nature of Suit: 710

Cause: 29:201 Fair Labor Standards Act

Jurisdiction: Federal Question

Disposition:

County: San Mateo

Terminated:

Origin: 1

Reopened:

Lead Case:

None

Related Case:

None

Other Court Case: None

Def Custody Status:

Flags: ADRMOP, E-Filing

Plaintiff: Daniel Keating-Traynor represented by Daniel Berko Phone:415-771-6174 x212

Fax: 415-474-3748

Email: berkolaw@sbcglobal.net

Defendant: AC Square

Defendant: Comcast Inc.

Defendant: Afshin Ghaneh

Defendant: Andrew Bahmanyar

PACER Service Center			
Transaction Receipt			
06/19/2008 11:30:32			
PACER Login:	lm0071	Client Code:	047098.1008
Description:	Case Summary	Search Criteria:	3:08-cv-02907-MHP
Billable Pages:	1	Cost:	0.08

## **PROOF OF SERVICE BY MAIL**

I am employed in Santa Clara County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 50 West San Fernando Street, 15th Floor, San Jose, California 95113-2303. I am readily familiar with this firm's practice for collection and processing of correspondence for mailing with the United States Postal Service. On June 19, 2008, I placed with this firm at the above address for deposit with the United States Postal Service a true and correct copy of the within document(s):

**NOTICE OF FILING REMOVAL**

**NOTICE TO PLAINTIFF OF REMOVAL OF CONSOLIDATED CIVIL ACTIONS TO FEDERAL COURT**

**NOTICE TO STATE COURT AND ADVERSE PARTY OF REMOVAL OF CIVIL ACTION  
TO FEDERAL COURT PURSUANT TO 28 U.S.C. § 1441(B) (FEDERAL QUESTION)**

**NOTICE OF REMOVAL OF CONSOLIDATED ACTION PURSUANT TO 28 U.S.C.  
§1441(B) FEDERAL QUESTION**

in a sealed envelope, postage fully paid, addressed as follows:

<b>Daniel Berko, Esq.</b> <b>819 Eddy Street.</b> <b>San Francisco, CA 94109</b>	<b>Comcast</b> <b>Attn: Rosemarie Pierce</b> <b>Agent of Service</b> <b>1500 Market Street</b> <b>Philadelphia, PA 19102</b>
--	--

Following ordinary business practices, the envelope was sealed and placed for collection and mailing on this date, and would, in the ordinary course of business, be deposited with the United States Postal Service on this date.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on June 19, 2008, at San Jose, California.

Pauline R. Lopez  
Pauline R. Lopez

Firmwide: 85618568.1 047098.1008